the trustees to divide "the trust premises constituting or representing" the residuary estate into certain shares and to pay the income of each share to a tenant for life with remainders over. The estate was composed of both authorized and unauthorized investments. *Held*, that the life tenants should enjoy the actual income from the unauthorized investments, pending conversion. *In re Godfree*, [1914] 2 Ch. 110.

When there is a trust for the benefit of life tenants and remaindermen, with an express provision for conversion or a duty to convert because the property is not properly invested, the gross fund is treated as converted from the date of the testator's death, and the life tenant is given the income that would have been earned, had the money then been properly invested. *Edwards* v. *Edwards*, 183 Mass. 581, 67 N. E. 658; *Brown* v. *Gellatly*, L. R. 2 Ch. App. 751. The courts aim to carry out the will of the testator, however, and the life tenant will take the actual income when such an intention appears. *In re Hubbuck*, [1896] 1 Ch. 754. Some jurisdictions deduce such an intention from the absence of a direction to convert. *Heighe* v. *Littig*, 63 Md. 301. See *Patterson* v. *Vivian*, 63 N. Y. Misc. 389, 399, 117 N. Y. Supp. 504, 510. But the better rule presumes from the gift to life tenants and remaindermen that the testator intended each to receive equal benefits, and therefore requires conversion unless some positive indication appears that the property was to be enjoyed *in specie*. *Porter* v. *Baddeley*, 5 Ch. D. 542. See PERRY, TRUSTS, 6 ed., p. 900. The English courts, however, seem to except income-producing land from this rule. *In re Oliver*, [1908] 2 Ch. 74. They also distinguish cases where there is an express power given to trustees to convert the estate or not at their absolute discretion. *Yates* v. *Yates*, 28 Beav. 637; *In re Pitcairn*, [1896] 2 Ch. 199. The principal case deserves criticism, in that it further impairs the general rule, and finds an intention that the property be enjoyed *in specie*, by a strained construction of the words "constituting or representing."

TRUSTS — CREATION AND VALIDITY — RESERVATION OF POWER TO REVOKE: LIABILITY TO TRANSFER TAX. — A donor executed a deed conveying property to a trustee on certain trusts, reserving an absolute power to amend or revoke the trust. A statute provided that transfers of property "by deed made in contemplation of the death of the grantor or intended to take effect in possession at or after such death" should be subject to a transfer tax. CONSOL. LAWS N. Y., TAX LAW, § 220, subd. 4. *Held*, that the trust fund is subject to a tax on the death of the donor. *In re Hoyt's Estate*, 86 N. Y. Misc. 696, 149 N. Y. Supp. 91.

The court imposes the tax on the ground that the transfer was "intended to take effect in possession at or after the donor's death." If this means that no trust was created until that time, the gift would be invalid as a testamentary disposition. *McEvoy* v. *Boston Five Cents Savings Bank*, 201 Mass. 50, 87 N. E. 465; *Nicklas* v. *Parker*, 71 N. J. Eq. 777, 71 Atl. 1135. That this is a difficulty however which does not appeal very strongly to the New York courts is apparent from their doctrine of "tentative trusts." *Matter of Totten*, 179 N. Y. 112, 71 N. E. 748. It is clear, moreover, that the mere reservation of a power to revoke did not invalidate the trust under the Statute of Wills. *Van Cott* v. *Prentice*, 104 N. Y. 45, 10 N. E. 257; *Kelly* v. *Parker*, 181 Ill. 49, 54 N. E. 615. But it is still open to the court to hold that the power to revoke shows such an intention to evade the inheritance tax that the trust is a testamentary disposition under the transfer tax laws. *Matter of Bostwick*, 160 N. Y. 489, 55 N. E. 208. It might have been a more satisfactory ground of decision to construe "in contemplation of death" to include gifts made *inter vivos* with an intent to escape the tax. Earlier New York cases, however, seem to exclude such an interpretation of the statute. *Matter of Spaulding*, 49 App. Div. 541, 63 N. Y. Supp. 694 (aff'd, 163 N. Y. 607, 57 N. E. 1124); *Matter of*

Mahlstedt, 67 App. Div. 176, 73 N. Y. Supp. 818 (aff'd, 171 N. Y. 652, 63 N. E. 1119). Whatever line of reasoning be adopted, the principal case reaches a result which seems essential in order to prevent wholesale evasions of the tax.

TRUSTS — POWERS AND OBLIGATIONS OF TRUSTEE — INVESTMENT OF TRUST FUNDS IN PARTICIPATING MORTGAGE IN TRUSTEE'S NAME. — A trust company invested the funds of several unrelated trusts in one mortgage, which it took in its own name, without any indication of the trust. Accurate accounts of the shares contributed by the various funds were kept, the security was ample, and the company could liquidate the investment of any of the funds at any time. *Held*, that the participating mortgage in the name of the trustee is improper. *In re Union Trust Co. of New York*, 149 N. Y. Supp. 324 (Surr. Ct., King's County).

The case is clearly right in holding that the investment in the trustee's own name was improper. *Corya* v. *Corya*, 119 Ind. 593, 22 N. E. 3; *In re Arguello*, 97 Cal. 196, 31 Pac. 937. The court also fully appreciated the dangers inherent in the mingling of the funds of different trusts in participating mortgages, but felt constrained by authority to uphold that feature of the investment because of its practical advantages. See *Chesterman* v. *Eyland*, 81 N. Y. 398; *Barry* v. *Lambert*, 98 N. Y. 300; *Graver's Appeal*, 50 Pa. 189. The weight of authority, however, forbids the investment of trust moneys in contributing mortgages, which deprive the trustee of control of the fund, and involve the beneficiaries' rights with those of strangers. *Webb* v. *Jonas*, 39 Ch. D. 660. It has also been held improper for a trustee to invest the funds of several unrelated trusts in a common or participating mortgage. *McCullough's Executors* v. *McCullough*, 44 N. J. Eq. 313, 14 Atl. 642. On principle, this attitude appears correct, for while the trustee retains control of the whole security, as he does not in the case of a contributing mortgage, he is nevertheless subject to conflicting duties to the several *cestuis*. There is also the constant danger of complications from the appointment of a new trustee for some of the funds, so that the system on the whole, in spite of its advantages in a given case, does not seem to merit judicial approval.

WAR — PRIZE — CAPTURE OF VESSEL TRANSFERRED TO DOMESTIC CORPORATION COMPOSED OF ALIEN ENEMIES. — Two vessels of German registry, owned by a German company, while *en route* from Hamburg to London, were sold by telegraph on August 1 to an English corporation controlled by the stockholders of the German company. On August 5, the day after the declaration of war, the vessels arrived at an English port, still flying the German flag, and were there seized as prizes. In a suit for their detention, the English corporation put in a claim that the transfer of ownership invalidated the seizure. *Held*, that the claim should be dismissed. *The Tommi* and *The Rothersand*, 59 Sol. J. 26 (Prize Court).

It is settled that all transfers of ownership *in transitu* are void when made during or in contemplation of hostilities, in order to avoid capture. *The Jan Frederick*, 5 C. Rob. 128; see *The Ann Green*, 1 Gall. (U. S.) 274, 291. See also 28 HARV. L. REV. 188, 190. Moreover, the German registry and flag are conclusive against the claimant. *The Danckebaar Afrikaan*, 1 C. Rob. 107, 113. See Declaration of London, art. 57; 28 HARV. L. REV. 217. The court further suggests that in spite of the formal transfer, the vessels might still be considered as German-owned because the English corporation was in reality substantially identical with the German company. It is possible that the intimation of the court was broader, and meant to imply that prize law might disregard the corporate fiction wherever the shareholders were alien enemies. The point, however, has never been decided, probably because the seizure has